

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

GEORGE PFEIFER, . Case No. 5:22-CV-01117
. .
Plaintiff, . Edward N. Cahn U.S. Courthouse &
v. . Federal Bldg.
504 W. Hamilton Street
Allentown, PA 18101
INVACARE CORPORATION, .
. .
Defendant. . October 5, 2022
. 2:00 p.m.

TRANSCRIPT OF PRETRIAL CONFERENCE
BEFORE HONORABLE JOSEPH F. LEESON, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 COURTROOM DEPUTY: -- All rise. Oh, yea, oh, yea,
2 oh, yea. All manner of persons having anything to do before
3 the United States District Court for the Eastern District of
4 Pennsylvania, which has been in continuous session since
5 November 10th, 1789, and which is here holding, we say let them
6 come forward and they shall be heard. God save the United
7 States and this Honorable Court. The Court is now in session
8 in the matter of George Pfeifer versus Invacare Corporation,
9 Civil Action Number 22-1117. Please be seated.

10 THE COURT: Good afternoon, everyone.

11 MR. DANIEL SETH ALTSCHULER: Good afternoon, Your
12 Honor.

13 MR. MICHAEL D. SHAFFER: Good afternoon.

14 THE COURT: Is Mr. Pfeifer here?

15 MR. SHAFFER: He is not, Your Honor.

16 THE COURT: Where is he?

17 MR. SHAFFER: He's in a nursing home. He's 94 years
18 old.

19 THE COURT: He's supposed to be here.

20 MR. SHAFFER: His client is -- this is his daughter
21 and she has a power of attorney. He's un -- he cannot travel.

22 THE COURT: Don't care. My policies require that the
23 Plaintiff be here.

24 MR. SHAFFER: Okay. He's not able to travel, and
25 he's not going to testify at the trial, actually.

1 THE COURT: Pardon?

2 MR. SHAFFER: He's not going to testify at the trial.

3 He's going to testify by deposition.

4 THE COURT: He can't make it to the Courthouse?

5 MR. SHAFFER: Correct.

6 THE COURT: All right. You may be seated.

7 MR. SHAFFER: Thank you.

8 THE COURT: All right. I've gone over the pretrial
9 submissions of the parties. I have some questions for each
10 side and then we're going to cover a number of areas today.
11 The first question I had was the medical condition of the
12 Plaintiff. I think you've already answered that in part.

13 MR. SHAFFER: I'm sorry, I didn't hear that.

14 THE COURT: I think you've already answered that
15 question in part.

16 MR. SHAFFER: Yes, Your Honor.

17 THE COURT: All right. His -- his deposition has
18 been taken?

19 MR. SHAFFER: Yes, Your Honor.

20 THE COURT: Has it? Are you going to rely on the
21 discovery deposition or did you do deposition for use of trial?

22 MR. SHAFFER: I did deposition for use of trial.

23 THE COURT: All right. And how long is that?

24 MR. SHAFFER: Approximately 25 minutes.

25 THE COURT: One of the questions I have is, in

1 looking -- you may be -- by the way, everyone can be seated to
2 -- for reasons --

3 MR. SHAFFER: -- Thank you.

4 THE COURT: -- of comfort. Now, when we're in front
5 of the Jury, then you can go to the usual standing and all
6 that. But...

7 MR. SHAFFER: Thank you, Your Honor.

8 THE COURT: In reviewing the Defendant's pretrial
9 memorandum, there seems to be, and I want to find out if this
10 is true or not true, four different versions of how the
11 accident happened given by your client. Is there anything to
12 that?

13 MR. SHAFFER: I don't -- I disagree with that, Your
14 Honor. I believe that he was walking and he testified, as he
15 was walking, the cane collapsed. I think that testimony is
16 pretty consistent. He was cross-examined on a medical record.
17 After about two hours of cross-examination by the Defendant, I
18 think he was confused and he testified consistent with my
19 questioning and he testified consistent on redirect.

20 But I believe that his testimony is consistent and
21 consistent with the ambulance report and the medical records in
22 the emergency room as to how the accident happened. And we
23 have, in fact, a broken cane here as to how the accident
24 happened. And Mr. and Mrs. Sanita, who came into the home the
25 date of the acc -- the date of the accident, Mrs. Sanita was

1 there, retrieved the broken cane, and Mr. Sanita, the son-in-
2 law, who came and retrieved it two days later and retrieved the
3 sheered pin.

4 THE COURT: And what's the defense view of this
5 multiple version --

6 MR. ALTSCHULER: -- Yes, Your Honor

7 THE COURT: -- situation. Is there anything to it?

8 MR. ALTSCHULER: Yes, there is plenty to it. The
9 Plaintiff testified inconsistently in his direct video exam. I
10 took a discovery deposition, also, between the direct
11 examination and my cross-examination off the video record. So
12 there's versions in there, then there's versions on cross-
13 examination and it's not as simple, respectfully, as Mr.
14 Shaffer would suggest it is. Rather, the cane did not
15 collapse, and we're going to establish it didn't collapse
16 before he slipped and fell. So there is a dispute.

17 THE COURT: All right. I'd like to take a look at
18 the cane.

19 MR. SHAFFER: May I approach, Your Honor?

20 THE COURT: Yeah.

21 MR. SHAFFER: So I have to kind of take it apart
22 because the --

23 THE COURT: -- Yeah, that's fine.

24 MR. SHAFFER: So can the Defendant see it? Do you
25 want...

1 THE COURT: Sure.

2 MR. SHAFFER: Thank you, Your Honor. So there's a --
3 I'll give you a chance after he's done with it. So...

4 MR. ALTSCHULER: Sure.

5 MR. SHAFFER: So there's two mechanisms within the
6 cane. Now, the cane came apart, I don't think (inaudible). So
7 the cane is in two tubes. Be careful, because the pins in
8 there. Two tubes inside, so you get this pin. It is locked
9 inside. I've seen this in similar, like a crutch or something.
10 The pin goes inside this like this. Okay? This locking
11 mechanism (inaudible). It's not working. The locking
12 mechanism is not working. The Plaintiff was up here. The
13 Plaintiff would then go to use the cane in this -- in this
14 position. The cane sheared off, went down and collapsed, and
15 he fell. It's consistent with what the (inaudible) report
16 says. The cane collapsed. And this (inaudible) matches in the
17 (inaudible), the cane collapsed. And we have a -- let me go
18 back. There's a pin that is sheared off inside of the cane.
19 There's an (inaudible).

20 THE COURT: What has -- wait, (inaudible). Is there
21 (inaudible)?

22 MR. SHAFFER: Sure, Your Honor. So the way this
23 works is, it's a double snap button. It's not just one.
24 You're going to see on this side of the cane, you've got a
25 severely (inaudible) as compared to other (inaudible) down. On

1 this side, you can see some wear, as well, but it is a
2 significant amount on this side. Through engineering analysis,
3 it's going to be established that the pin that was on this side
4 -- it's a double snap button, so it's like a V-shaped pin that
5 the buttons catch at the end and then they protrude through
6 these adjustment holes. Through an engineering analysis, we're
7 going to establish that this pin had failed sometime before,
8 significantly (inaudible) in that time before this one
9 ultimately failed. And that's why this hole is much more
10 elongated than this hole. So this condition, the condition of
11 this cane, the significant wear and tear, had existed for a
12 very long time.

13 This cantilever is designed to prevent the outer tube
14 and the inner tube from rotating or movement when you snap the
15 cantilever. Because it had not been working for a substantial
16 period of time, it did not prevent the inner and the outer tube
17 from rotating. And as a result, the double snap buttons were
18 getting all of the load every time Mr. Pfeifer used the cane.
19 He was also using the cane in an improper condition, an
20 improper manner. You can see that this one --

21 THE COURT: -- All right. At this point, I just
22 wanted to see the cane --

23 MR. SHAFFER: -- Sure.

24 THE COURT: -- and just get a feel for both sides
25 only.

1 MR. SHAFFER: Okay. No problem.

2 THE COURT: Okay. The medical bills for the
3 Plaintiff, is there any stipulation on the bills?

4 MR. ALTSCHULER: I mean, we filed a motion to
5 preclude bills that we challenged as being unrelated, because
6 the Plaintiff had a gallbladder operation while in the
7 hospital, which extended his stay. But we would otherwise be
8 willing to stipulate to the amount that would be related to his
9 hospital stay. We are not stipulating to treatment post --
10 when he rehabbed at the assisted living facility.

11 THE COURT: All right. So authenticity, fairness,
12 and reasonableness, medical necessity for the hospital bill and
13 do you -- did both sides have a clear understanding as to
14 what's being stipulated to and what's not being stipulated to?

15 MR. SHAFFER: Well, Your Honor, I'm confident we'll
16 be able to figure out what is being carved out for the gall
17 bladder. I'm, I'm confident we'll be able to figure that out.

18 THE COURT: All right. Because I, I don't want to
19 spend time in front of a Jury --

20 MR. SHAFFER: -- No.

21 THE COURT: -- on that subject.

22 MR. SHAFFER: I think I'm confident we'll be able to
23 figure that out.

24 THE COURT: All right. I'll direct that by next
25 Tuesday at 12:00, noon, that you submit a joint report to me on

1 this topic.

2 MR. SHAFFER: Yes, Judge.

3 THE COURT: How it's been resolved, what's going to
4 be stipulated to, and what's not going to be stipulated to. As
5 far as witnesses, I see the Plaintiff has six witnesses. Lisa
6 Sanita, is that you, ma'am? And how long will Ms. Sanita be on
7 the witness stand for direct?

8 MR. SHAFFER: Her direct, maybe half hour, 45
9 minutes.

10 THE COURT: And Mr. Sanita, that would be you, sir?

11 MR. RICHARD J. SANITA: Yes.

12 THE COURT: How long do you think Mr. Sanita would be
13 on the stand?

14 MR. SHAFFER: Half hour.

15 THE COURT: And you have listed John Belita
16 [phonetic] from the Defendant. How long do you think you'll be
17 with him on, on direct?

18 MR. SHAFFER: Maybe 90 minutes, maybe more, maybe two
19 hours. Maybe -- I have to prove my case with him, so...

20 THE COURT: And then your engineering expert on
21 direct.

22 MR. SHAFFER: Hour and-a-half.

23 THE COURT: And Dr. O'Neil, is he going to be on
24 video?

25 MR. SHAFFER: I'm taking his videotaped deposition

1 for trial Friday. So I can't imagine that that would be very
2 long.

3 THE COURT: So it sounds like you probably only need
4 about, aside from openings and jury selection, you're only
5 going to need about a day, just to your case in chief, not, not
6 accounting for cross-examination.

7 MR. SHAFFER: I would say about a day and-a-half, I
8 would think, Your Honor.

9 THE COURT: All right.

10 MR. SHAFFER: With the cross-examination.

11 THE COURT: I note that you've also got various
12 medical records and hospital records as part of your exhibit
13 list. Is there going to be a stipulation as to authenticity as
14 far as the records?

15 MR. ALTSCHULER: Yes, I'll stipulate the
16 authenticity.

17 MR. SHAFFER: Yes, Judge.

18 THE COURT: All right. All right, that's all the
19 questions I have for the Plaintiff. Does the Defense have any
20 questions for the Plaintiff based on the Plaintiff's pretrial
21 memorandum?

22 MR. ALTSCHULER: No, the only thing that I've asked
23 from Mr. Shaffer is that he let me know the order of his
24 witnesses, particularly for Mr. Belita, because he will be
25 flying in from out of town, so I can make sure he's available.

1 THE COURT: All right. I'm sure your --

2 MR. SHAFFER: -- I will, of course, do that, Your
3 Honor.

4 THE COURT: All right. Let's turn to the Defendant's
5 pretrial memorandum. I note that on Page 2 of the Defendant's
6 pretrial memorandum, there's an assertion that Mr. Beatty,
7 [phonetic], the Plaintiff's liability expert, admitted that he
8 cannot state, to a reasonable degree of certainty, that the
9 quad cane was manufactured by the Defendant. Is that true?

10 MR. SHAFFER: I think it was based upon the
11 discovery, and you already struck that in motion in limine.

12 THE COURT: Okay. Are you denying that it's -- oh,
13 yeah, a cane manufactured by your company, or are you admitting
14 it's your product?

15 MR. ALTSCHULER: We are not admitting it's our
16 product, Your Honor.

17 THE COURT: How are you going to prove that?

18 MR. SHAFFER: Through discovery. And it's the same
19 product, it's got the same measurements, it's got the same
20 model number, it's got the same sku number. It's the same
21 drawings. The drawings are exactly the same, the same
22 measurements. It's got a model number, a sku number. It's the
23 exact same -- it's got the exact -- it's the -- the drawings
24 match the exact cane.

25 THE COURT: Are there any other companies with

1 || identical designs?

2 MR. SHAFFER: Not for this model number, not that I'm
3 aware of.

4 THE COURT: So this is the only company that makes
5 this product?

6 MR. SHAFFER: That I know of, yes, in this model
7 number, Your Honor.

8 THE COURT: There's another assertion in the
9 Defendant's pretrial memorandum that the Plaintiff's liability
10 expert, this is on Page 4, Mr. Beatty admitted that the
11 accident potentially could have happened even if all of his
12 proposed alternative design changes were implemented. Did your
13 expert say that?

14 MR. SHAFFER: No, it was based upon a hypothetical
15 question, based upon Mr. Altschuler's -- he said, assume all of
16 these facts, all those hypothetical that he suggested. And so
17 that's not the way the testimony went in. It was based upon a
18 hypothetical.

19 MR. ALTSCHULER: Your Honor, if I may?

20 THE COURT: Yeah, go ahead.

21 MR. ALTSCHULER: He absolutely admitted to that,
22 because he's done no testing at all. And the hypothetical was
23 based upon the facts of this case, meaning no maintenance
24 repair, no inspection, cane used for 11 years. Using his
25 design, he can't state that the accident would not have

1 happened. That's the testimony. So it is a hypothetical, but
2 it's a hypothetical based upon the facts of this case.

3 THE COURT: And then the Defendant is also asserting,
4 on Page 6, that of the 118,000 quad canes manufactured between
5 2011 -- 2011 and 2016, the Plaintiff's claim of snap button
6 fracture is the only one known to the Defendant. Is that an
7 accurate statement?

8 MR. SHAFFER: I believe there are three other cases
9 where a snap button was mentioned as a fracture or there was a
10 problem with a snap button. They tried to explain that, but
11 that's for the Jury to determine whether or not those were
12 significantly similar. In other words, they're -- in the
13 report, it says snap button -- cane broke because of snap
14 button. There are three instances. And we asked the Defendant
15 to try to explain a way, no, these are not really snap buttons.
16 But it says specifically in their reports, snap buttons.

17 MR. ALTSCHULER: It does not say that, Your Honor.
18 And most importantly, Mr. Beatty agreed with me that out of
19 three complaints that were produced -- and the only reason we
20 said anything or provided anything with regard to prior
21 complaints is because there was some discussion about snap
22 buttons, but none of them say anything about a snap button
23 failure or fracture. I got Mr. Beatty to agree with me.

24 He references two of the three complaints in his
25 report for the proposition that Invacare knew or should have

1 known that the cane was defectively designed. I went through
2 each of those complaints with him, painstakingly, and got him
3 to agree that neither of those complaints stand for the
4 proposition that the snap button fractured or failed in the
5 manner that is being alleged by the Plaintiff.

6 And I know that Your Honor has ruled on that motion
7 in limine, but it's appropriate for me to ask right now, if
8 you're going to give Plaintiff any latitude in this area, I
9 would respectfully request that he not be able to bring it up
10 in his opening at all, but rather, he's got to lay a
11 foundation, and perhaps even an offer of proof.

12 THE COURT: Yeah. Anything that I've ruled on,
13 you're not allowed to bring up during your openings.

14 MR. SHAFFER: Okay.

15 THE COURT: Now, I'm not nec -- when I issue rulings
16 without prejudice, that means you can certainly try to bring it
17 up during the course of the trial if you lay a sufficient
18 foundation and you bring it to my attention that you want to
19 get into this area. I'll reconsider and reevaluate and see how
20 the evidence develops. No, but I, I want to be very clear,
21 anything that has been ruled out at this point, you can't bring
22 up during openings.

23 MR. SHAFFER: Is the same true for, for example, if
24 you denied a motion without prejudice, one of my motions in
25 limine without prejudice, then that topic, for example, prior

1 || similar complaints can't be raised during opening?

2 THE COURT: Well, let's take a look at the specifics
3 of which ruling you're asking about.

4 MR. SHAFFER: Okay.

5 THE COURT: And then we'll -- and then I'll respond
6 to you.

7 MR. SHAFFER: Okay. Thank you.

8 THE COURT: But let's finish this process.

9 MR. SHAFFER: Sure.

10 THE COURT: I see that the Defendant has, looks like
11 five witnesses. Mr. Belita, the same gentleman that the
12 Plaintiff intends to call, how long do you think you will be
13 with Mr. Belita?

14 MR. ALTSCHULER: I would say about an hour, Your
15 Honor, somewhere in that range. Depends upon what Mr. Shaffer
16 does with him on cross.

17 THE COURT: And you have Charles Konkol.

18 MR. ALTSCHULER: That's Mr. Konkol sitting right next
19 to me, Your Honor. He's from Invacare and he's going to be
20 about a half an hour at best.

21 THE COURT: And Rory Pfeifer, is that a family member
22 of the Plaintiff?

23 MR. ALTSCHULER: Yes, Your Honor. We've stipulated,
24 Mr. Shaffer and I have stipulated that I can read in portions
25 of his deposition during my case in chief. And we just have to

1 come to an agreement if there's any objections.

2 MR. SHAFFER: No, we (inaudible).

3 THE COURT: And then you have liability expert, Mr.
4 Toler [phonetic].

5 MR. ALTSCHULER: Yes.

6 THE COURT: Any estimate as to how long he'd be on
7 direct?

8 MR. ALTSCHULER: I would say he'd be a couple of
9 hours, Your Honor.

10 THE COURT: You're both experienced trial lawyers, so
11 you know when you talk about a couple of hours with a liability
12 expert, you run the risk of putting the jury to sleep. But
13 that's your --

14 MR. ALTSCHULER: -- I just don't --

15 THE COURT: -- issue.

16 MR. ALTSCHULER: I just don't want to tell you it's
17 going to be an hour and then go over and --

18 THE COURT: -- No, I'm not holding anybody to these
19 estimates. I'm just trying to plan our week.

20 MR. ALTSCHULER: Sure.

21 THE COURT: That's all. And then Mr. Stephanachi
22 [phonetic], your damage expert. Any estimate?

23 MR. ALTSCHULER: He's already testified. I think the
24 video might run about an hour and 45 minutes, both direct and
25 cross. Your Honor, if I may, because I don't know that it's on

1 my pretrial, but I -- it's in -- it's in the pretrial, I did
2 designations from Plaintiff's discovery deposition that I will
3 also be reading into evidence in my case in chief.

4 THE COURT: All right. I see that that the Defense
5 is moving to dismiss the lawsuit with respect to the claims of
6 expressed warranty and implied warnings of merchant building
7 and fitness for a particular purpose based on the statute of
8 limitations, and I've reviewed that. What's the Plaintiff's
9 position on the statute of limitations on these warranty
10 claims?

11 MR. SHAFFER: They, they don't -- the statute of
12 limitations doesn't hold for any damages, and the damages don't
13 occur until January.

14 THE COURT: All right. What I'm going to ask you to
15 do -- have we received any briefing on this --

16 MR. ALTSCHULER: -- Well --

17 THE COURT: -- Alesandra [phonetic] --

18 MR. ALTSCHULER: -- it's in my pretrial, Your Honor.

19 THE COURT: -- from the Plaintiff?

20 THE CLERK: Only the Defense.

21 THE COURT: Only the Defense. All right. I'm going
22 to direct that you file a memorandum on this by Friday, 5:00
23 p.m., setting forth legal authority that you believe supports
24 your position that these two claims should not be dismissed
25 because of the statute of limitations. We'll take a look at

1 your legal authority. All right. That's all the questions I
2 have for the Defense. Does the Plaintiff have any questions
3 for the Defense based on the Defendant's pretrial memorandum?

4 MR. SHAFFER: No, Your Honor.

5 MR. ALTSCHULER: Your Honor, may I raise an issue
6 based upon my pretrial?

7 THE COURT: Mm-hmm.

8 MR. ALTSCHULER: So Your Honor's ruled, the
9 Plaintiff's conceded, Mr. Beatty conceded during his cross-
10 examination, or deposition, excuse me, that he is not claiming
11 a manufacturing defect. The law in --

12 THE COURT: -- You agree with that?

13 MR. SHAFFER: Yes, Your Honor.

14 THE COURT: All right.

15 MR. ALTSCHULER: The law in Pennsylvania is crystal
16 clear. The malfunction theory applies to a manufacturing
17 defect only. It does not apply to a design defect theory,
18 which is what Mr. Beatty is claiming in this case. Plaintiff,
19 when, and I'm not sure, well, I assume you're going to be
20 talking about, Your Honor's going to be talking about the joint
21 statement momentarily, but in the Plaintiff's joint statement,
22 he wants to be able to refer to the cane as having
23 malfunctioned. That's a term of art. That's a legal term.
24 And that's why we raised it in our pretrial statement, because
25 there is no claim for a manufacturing defect, there can be no

1 malfunction theory in this case.

2 THE COURT: And what's your position on that?

3 MR. SHAFFER: Sure, Your Honor. There is no need --
4 malfunction is a way to prove a defect. And the Pennsylvania
5 Supreme Court has been clear that a Plaintiff may prove
6 malfunction simply by showing that there's a defect in a
7 product, the occurrence of a malfunction is eliminating that
8 normal use or reasonable secondary causes for the malfunction.
9 There's no reason -- there's no need to prove manufacturing
10 defect. This is just a way to prove a malfunction about a
11 product defect case.

12 Yes, you can prove a manufacturing defect. That's
13 one of the ways. But that's not the only way to prove a
14 malfunction. We have an expert that testify that -- the expert
15 Mr. Beatty's report says it malfunctioned because it's broken,
16 and there are no reasonable secondary causes in his expert
17 report. We have something that's broken. He explained why it
18 broke, because of the improper design. And therefore, it's a
19 broken cane. The Plaintiff has clearly and properly proven a
20 malfunction case. There's a broken cane.

21 THE COURT: All right. I generally like to, when I
22 make legal rulings, I generally like to check the law before I
23 issue the ruling rather than go on my recollections. So I'm
24 going to direct that both sides submit, and by the way, you can
25 do this in the form of a letter brief without the formality of

1 a memorandum or a brief, you can just do a letter, but submit
2 letter briefs on this by, let's do -- let's do Friday at 12:00,
3 noon, of this week.

4 In fact, the memo I talked to you earlier about, that
5 I said would be due at 5:00, make it due at 12:00, noon.
6 That'll give my staff a chance to work on it during work hours.
7 So let's do letter briefs on this subject, as well.

8 MR. SHAFFER: Thank you, Your Honor.

9 THE COURT: All right. I note that, looks like
10 Invacare sent a proposed stipulation of uncontested facts to
11 the Plaintiff on September 27. Where does that stand?

12 MR. SHAFFER: I think we can agree with those. I, I
13 just got them. I just finished a trial this week. But yes, I
14 can agree to those. We'll -- I'll work those out with the
15 counsel. I just literally finished a trial (inaudible). So I
16 will work this out with counsel.

17 THE COURT: All right. Yeah. I saw the news report
18 on it today.

19 MR. SHAFFER: Thank you.

20 THE COURT: Yeah. Congratulations.

21 MR. SHAFFER: Thank you. It's been -- and I -- Your
22 Honor, again, I just want to say on the record, I, I
23 miscalendared the motions in limine date. I, I sincerely
24 apologize. It was my office.

25 THE COURT: It's all right.

1 MR. SHAFFER: And I -- I'm very, very sorry. We --
2 we're really usually very good at that. It kind of slipped
3 through the cracks.

4 THE COURT: No, you have a busy practice. I
5 understand.

6 MR. SHAFFER: I, I -- it's not -- it's no excuse,
7 Your Honor. I apologize.

8 THE COURT: Yeah. All right. Well then, I would
9 like to then on -- by Friday at 12:00, noon, be notified as to
10 the status and the outcome of those discussions. And if you
11 are able to confirm you agree to all the proposed stipulation
12 of facts or if there are any that you don't agree with.

13 MR. ALTSCHULER: Okay.

14 THE COURT: All right?

15 MR. SHAFFER: Yes, Your Honor.

16 THE COURT: All right. The joint summary that we
17 want to read to the panel before voir dire, it doesn't have to
18 be long, but we have to tell the prospective jurors a little
19 bit about the case so they have a context in which to
20 understand the questions that are going to be asked of them.

21 Where does that stand?

22 MR. SHAFFER: I don't think we were able to agree to
23 it, Judge.

24 MR. ALTSCHULER: Yeah. That actually was the issue
25 that I just brought up, Your Honor. Plaintiff's joint

1 statement wants to reference malfunction. He would like to
2 also reference breach of warranty, which for the reasons we
3 just discussed --

4 THE COURT: -- Yeah, generally, we don't get into
5 specifics of legal issues on the joint summary read to a
6 perspective panel. We get into the fact that it's -- this was
7 an accident, here's how the accident allegedly happened
8 according to Plaintiff, here's how the accident allegedly
9 happened -- allegedly happened according to the Defendant.
10 It's a lawsuit involving alleged products liability, involving
11 a quad cane. Something simple.

12 MR. SHAFFER: Okay.

13 THE COURT: But we're not -- we generally don't get
14 into legal theories and legal details at that early stage of
15 the case. So I'm going to direct that by -- also by 12:00,
16 noon, Friday, that you reach agreement on a brief, simple joint
17 summary to be read to the jury panel before voir dire
18 commences. Same instruction I'm going to give to you to reach
19 agreement on a joint summary to be read to the seated jury who
20 will hear the case.

21 It can be -- if you feel it's the same statement read
22 over again, we can do that. But we want to give them just a
23 brief overview of what the case is about. So again, by 12:00,
24 noon, Friday to reach agreement on that.

25 MR. SHAFFER: Yes, Your Honor.

1 THE COURT: Next, let's turn to voir dire. As I
2 recall, both of you have submitted proposed voir dire
3 questions. Does Plaintiff have any objections to any of the
4 questions that the Defendant wants to ask?

5 MR. SHAFFER: Sorry, I've just got to go over the...
6 No, Your Honor.

7 THE COURT: Does Defense have any objections to any
8 of the questions the Plaintiff wants to ask?

9 MR. ALTSCHULER: I have an issue with Number 15, Your
10 Honor, and 16, and 17.

11 THE COURT: 15, 16, and 17.

12 MR. ALTSCHULER: And 19.

13 THE COURT: And 19. All right. We'll take a look at
14 those. All right. All the other questions, you don't have any
15 objection to?

16 MR. ALTSCHULER: Correct.

17 THE COURT: All right. As an infor -- as an
18 information item with all of my jury trials, I do the voir
19 dire. So it'll give you an opportunity to take notes as we
20 hear the responses from the jurors. And then once I finish, if
21 there's any follow up, not a lot, but if there's any important
22 follow up you think needs to be addressed, we'll, we'll take
23 that up.

24 MR. ALTSCHULER: But you would still be asking any
25 follow up, is that --

1 THE COURT: -- It depends on what it is.

2 MR. ALTSCHULER: Okay.

3 THE COURT: Yeah. Next, would you both, both sides,
4 please send your voir dire questions to us in a Word document
5 format via e-mail, and then we're -- then we're going to
6 combine them into one set for me to ask.

7 MR. SHAFFER: I think we did already, Your Honor.

8 MR. ALTSCHULER: Already did, Your Honor.

9 THE COURT: Did you do it?

10 MR. SHAFFER: Yeah.

11 MR. ALTSCHULER: Yeah, I believe we did it. We can
12 do it again.

13 THE COURT: Why don't you do it again, just for the
14 sake we don't have to look for it if... I don't doubt you when
15 you say you already sent it, but if you would send it again,
16 that would be great.

17 MR. ALTSCHULER: Sure.

18 THE COURT: We will hold a charge conference before
19 closing arguments, so you will have an indication as to the law
20 that I will give to the jury. This is a reminder that, under
21 my rules, you need to bring three sets of joint exhibit
22 binders, three ring binders, and they need to be available the
23 first day of trial. First day of trial, of course, will be
24 Tuesday. Monday is a federal holiday.

25 MR. ALTSCHULER: Your Honor, with respect to that, I

1 was speaking with Mr. Shaffer before we started today. There's
2 pretty extensive exhibits. Our exhibits take up two full
3 notebooks and-a-half. I'm sure Mr. Shaffer's will be the same.
4 When you say joint, do we just have like a joint exhibit list
5 and then --

6 THE COURT: -- Mm-hmm.

7 MR. ALTSCHULER: -- we just deliver those binders and
8 have --

9 THE COURT: -- You merge the two. Plaintiff exhibits
10 and Defendant exhibits together, merge them into one list, one
11 set of numbering, and put them all in three ring binders. The
12 reason we do that is, we've often found that the Plaintiff
13 sometimes will have the same exhibit as the Defendant;
14 Defendant will sometimes have the same exhibit as the
15 Plaintiff. Each one will use their own. And sometimes, it
16 gets a little bit confusing with respect to exhibit numbers.
17 So we'd like to have one list of exhibits, one set of exhibits.

18 MR. SHAFFER: And so, at trial, should we call them
19 Trial Exhibit 1 or just Plaintiff's Exhibit 1, or how would you
20 like us to reference that?

21 THE COURT: You can call it -- if you -- how have we
22 done it in the past? I don't remember.

23 COURTROOM DEPUTY: It's usually J1.

24 THE COURT: J1.

25 MR. SHAFFER: J1.

1 THE COURT: And of course, it doesn't mean anything
2 to the Jury, whether it's Plaintiff 1 or J1, or what.

3 MR. SHAFFER: Of course, yeah.

4 THE COURT: Yeah.

5 MR. SHAFFER: I just didn't know what you wanted us
6 to do.

7 THE COURT: Yeah. So it'll be J1, J2, so on and so
8 forth.

9 MR. SHAFFER: Okay.

10 THE COURT: We will start in Philadelphia on Tuesday,
11 and we will make it a full day. Jury selection, I generally
12 find, takes an hour to two hours. Are we number two on the
13 jury selection list, Mr. Wood?

14 COURTROOM DEPUTY: Yes, sir.

15 THE COURT: That means that, depending on how many
16 jurors report for duty on Tuesday, we may get a panel
17 immediately to choose from, or if there's a low number of
18 jurors that report for duty on Tuesday, we may have to wait the
19 case until the case ahead of us completes jury selection. So
20 we won't know that until Tuesday morning.

21 But I find in civil cases, jury selection generally
22 takes an hour to two hours, because I move it along pretty
23 quickly. Do expect to be prepared to proceed with the trial
24 immediately thereafter with opening statements and with
25 presentation of evidence. We're going to try to make it a

1 productive day. Every day thereafter will be held here in
2 Allentown. So just the first day in Philadelphia.

3 MR. ALTSCHULER: Your Honor, if I may, the exhibits
4 that we're going to be providing to the Court, they should be
5 delivered in Philadelphia?

6 THE COURT: Mm-hmm.

7 MR. ALTSCHULER: Okay.

8 THE COURT: Yeah. We generally start every day at
9 9:00 and finish every day at 5:00. We'll take a break in the
10 mid-morning for restroom, and a break in the mid-afternoon for
11 the restroom. Typically, an hour for lunch. In Philadelphia,
12 we're assigned to Courtroom 3B, that's three as in boy, 3B,
13 third floor. So we will see you there Tuesday morning in
14 Courtroom 3B. How much time does the Plaintiff estimate you'll
15 need for opening statement?

16 MR. SHAFFER: 20 minutes.

17 THE COURT: And Defense?

18 MR. ALTSCHULER: I would say somewhere in that range,
19 Your Honor.

THE COURT: Okay. As far as number of jurors, I'm thinking eight. And we'll go with -- we have to have a minimum of six in a civil case, but I think we'll go with eight. As you know, each party has three preemptory challenges. I think I already covered this, but to the extent I denied any motions in limine without prejudice, such evidence may not be mentioned

1 in opening statements or by witnesses before a proper
2 foundation is laid and it's brought to my attention for a
3 ruling. All right. That's all I have. Let me see.

4 THE CLERK: (Inaudible)?

5 THE COURT: Hmm?

6 THE CLERK: The technology (inaudible).

7 THE COURT: Oh, that's right. Yeah. You'll probably
8 see that my Courtroom is a beautiful courtroom, but it has no
9 technology in it. So to the extent that you want technology,
10 you have to bring it, bring your own stuff. And I expect that
11 if somebody brings technology, they'll have the professional
12 courtesy to let the other side use it.

13 MR. SHAFFER: Yeah, we just agreed to that, Judge,
14 this afternoon.

15 THE COURT: Okay. All right. That's all I have.
16 Let's turn to each side. Plaintiff, anything else you want to
17 bring up or have me address?

18 MR. SHAFFER: On the pretrial, Your Honor?

19 THE COURT: Yeah.

20 MR. SHAFFER: No, Your Honor.

21 THE COURT: All right. Defense?

22 MR. ALTSCHULER: Yes, Your Honor. Just with regard
23 to the motions in limine. This is where I want to make sure
24 that we're clear on what can be said during opening and what
25 can't be.

1 THE COURT: All right. Well, let's turn to the
2 ruling that you're looking at. Okay. Is this the order of
3 September 29th?

4 MR. ALTSCHULER: Yes, Your Honor.

5 THE COURT: All right. Go ahead.

6 MR. ALTSCHULER: So this concerns the omnibus motion
7 in limine, it's Page 2 of Your Honor's ruling.

8 THE COURT: Okay.

9 MR. ALTSCHULER: With regard to subparagraph -- I
10 apologize, Your Honor. You've already discussed the
11 manufacturing. This will be F, since Mr. Beatty is precluded.
12 So this has to do with the malfunction theory that I brought up
13 earlier. So I just want to point that out.

14 MR. SHAFFER: I -- I'm sorry. I didn't hear what you
15 were saying.

16 MR. ALTSCHULER: With regard to I, Your Honor, Dr.
17 Beatty may testify generally as to whether a screw style cam
18 lock or circum -- or circumferential cam lock distributes the
19 load between the lock and snap buttons.

20 So we, we raise this issue, Your Honor, because Mr.
21 Beatty did no testing to establish that, in this hypothetical
22 cane, or any other cane for that matter, like an exemplar cane
23 from another manufacturer, that this screw style lock that he's
24 talking about is designed in order to take the load off those
25 snap buttons. He's done no testing whatsoever. So it's

1 completely without any reliability for him to come in and
2 testify that it would -- it would distribute the load.

3 So I just raise that, Your Honor, because any opinion
4 that he would offer about a hypothetical that he didn't test
5 would just be creating confusion for the jury as to whether
6 that type of lock could work when he doesn't know himself.

7 THE COURT: Well, what we're going to do is, you can
8 certainly object at the time the question is asked. Let me see
9 how the record is developed to that point --

10 MR. ALTSCHULER: Okay.

11 THE COURT: -- in time. But if the facts are, as you
12 suggest, then you're certainly going to have very strong cross-
13 examination material.

14 MR. ALTSCHULER: Yeah, I, I agree. The same is true
15 for his lock collar loosening. But I, I won't argue on that
16 point at this moment. With regard to K, Your Honor, the ruling
17 on K and the footnote, Your Honor indicates that he is
18 precluded from offering an opinion that Mr. Pfeifer or any user
19 could safely use his hypothetical steel cane, which weighs one
20 and-a-half pounds more than the subject cane. But in the
21 footnote, Your Honor, you indicate that Mr. Beatty may testify
22 to the difference in weight.

23 And respectfully, if he can't say that a cane that
24 weighs more is a safe alternative design, which the law
25 requires, then I would suggest to you that him offering any

1 opinion with regard to a steel cane and its weight becomes
2 irrelevant. And therefore, it should just be an issue -- it
3 should not be an issue for the jury to even hear.

4 THE COURT: All right. We'll take a look at that.

5 MR. ALTSCHULER: Okay.

6 THE COURT: If you want to submit any supplemental
7 argument on that point in way of reconsideration, do you want
8 to do so?

9 MR. ALTSCHULER: Yes, if that's okay, Your Honor.

10 THE COURT: Yeah. And then the Plaintiff can
11 certainly respond.

12 MR. ALTSCHULER: Okay.

13 MR. SHAFFER: I mean, I think we've briefed this
14 already, Your Honor.

15 THE COURT: I think you have, but you know what, if
16 there's anything else you have to add to it or if you want to
17 present it in a more persuasive manner.

18 MR. ALTSCHULER: A better way than we did. Okay.

19 THE COURT: Yeah.

20 MR. ALTSCHULER: All right. I -- if it's okay, I may
21 do that with respect to just a couple of others and I won't --
22 I won't inundate the Court.

23 THE COURT: All right. And then you can certainly
24 respond. How soon can you get that in?

25 MR. ALTSCHULER: We can get that to you by Friday,

1 Your Honor.

2 THE COURT: Can you get it sooner, because I'd like
3 to give the Plaintiff an opportunity to respond --

4 MR. ALTSCHULER: Sure.

5 THE COURT: -- if you want to. How about tomorrow at
6 noon?

7 MR. ALTSCHULER: I'll, I'll get it to Plaintiff
8 tomorrow by noon.

9 THE COURT: All right. And then you can respond by
10 Friday at noon, if you want to respond, or rest on what you've
11 already submitted.

12 MR. SHAFFER: Okay.

13 THE COURT: All right. Anything else?

14 MR. ALTSCHULER: Yes, Your Honor. With regard to the
15 order dated September 30th, Item Number 3, Your Honor, Rule
16 Number 3. With regard to issues related to certain testimony
17 of the Plaintiff concerning insurance, and the Plaintiff
18 testifying, it's in his -- it's in his trial deposition, Your
19 Honor, which is, as the Plaintiff's indicated, I'm not
20 (inaudible), so it's already ripe for the Court, in my opinion.
21 He testified that he essentially was thrown out of rehab
22 because of insurance.

23 THE COURT: All right. So this is already in the
24 Plaintiff's trial deposition.

25 MR. ALTSCHULER: Yes.

1 THE COURT: All right. I'm going to ask you to do
2 the same thing.

3 MR. ALTSCHULER: Okay.

4 THE COURT: Tomorrow by noon, put it in writing. By
5 the way, you can do it informally with a letter. You don't
6 have to do a memorandum or brief. And then same thing,
7 Plaintiff wants to respond, by Friday at noon.

8 MR. SHAFFER: I think, Your Honor, respectfully,
9 we've kind of litigated this already. But we've done motions
10 in limine, and that's the reason we've done motion in limine,
11 so we can --

12 THE COURT: -- I understand. But if something is
13 important enough for one of the attorneys to raise it at the
14 pretrial conference, I interpret it as a request for
15 reconsideration and we'll take a look at it. That doesn't mean
16 I'm going to change my position or change my ruling.

17 MR. SHAFFER: I understand.

18 THE COURT: But I, I always am willing to consider
19 what's being requested.

20 MR. SHAFFER: I understand, Your Honor.

21 MR. ALTSCHULER: And then I've already raised the
22 issue of prior complaints. So the only point I would make with
23 respect to that issue is that the Plaintiff not be permitted --
24 Your Honor denied it without prejudice, but what I would sug --
25 would request, respectfully, is that the Plaintiff not be

1 || permitted to raise the issue of any alleged prior complaints in
2 || his opening. And then, before he asks any witnesses any
3 || questions about alleged prior complaints, that there be an
4 || offer of proof, because we believe, Your Honor, the law is
5 || crystal clear on our side, there has to be substantial
6 || similarity. There isn't.

7 THE COURT: Yeah, I agree with that. I'm directing
8 you not to bring that up in your opening statement.

9 MR. SHAFFER: I, I won't. I've already said that I
10 won't.

11 THE COURT: All right. Well, we're just reaffirming.

12 MR. SHAFFER: Of course.

13 THE COURT: And if you do decide, we'll, we'll hear
14 what the evidence is before deciding admissibility. So you can
15 raise objections as the -- as these issues surface.

16 MR. ALTSCHULER: Thank you, Your Honor. That's all I
17 have.

18 THE COURT: All right. Anything else before we
19 adjourn this part of today's session?

20 MR. SHAFFER: No, Your Honor.

21 THE COURT: All right. All right, then being nothing
22 else, what we're going to do is we're going to adjourn the
23 pretrial conference and then hold a settlement conference. Mr.
24 Wood, would you adjourn Court?

25 COURTROOM DEPUTY: Yes, sir. Court is adjourned.

1 THE COURT: All right. What I'd like to do if it's o

2 --

3 [OFF THE RECORD 02:45:23]

4 [ON THE RECORD 04:33:50]

5 THE COURT: All right. Mr. Wood, when you're ready,
6 would you reopen Court, please.

7 COURTROOM DEPUTY: Court is again in session.

8 THE COURT: All right. We had an off the record
9 settlement conference between the parties and an agreement
10 involving a binding arbitration with a high/low award limit, I
11 believe, has been reached. What we're going to do is, in just
12 a moment, I'm going to ask the lawyers to state the terms of
13 the agreement and -- but first, we want to have the clients
14 sworn in, because we're going to ask them, after the agreement
15 is stated, whether they're in agreement, whether they've
16 authorized it. So Mr. Wood, would you administer the oath?
17 Ask them to identify themselves and administer the oath to each
18 one of the clients that are here today.

19 COURTROOM DEPUTY: Yes, sir.

20 MS. LISA M. SANITA: I'm sorry, I didn't hear what he
21 said.

22 COURTROOM DEPUTY: No, that's fine. We'll go through
23 it right now. Could you raise your right hand?

24 THE COURT: First, state your name.

25 COURTROOM DEPUTY: So, we're -- we'll do it -- you

1 first, and then you, and then you. Raise your right hand. Do
2 you swear or affirm that the testimony you're about to give to
3 this Court will be the truth, the whole truth, and nothing but
4 the truth, so help you God or do you so affirm?

5 MS. SANITA: I do.

6 LISA SANITA, PLAINTIFF, SWORN

7 COURTROOM DEPUTY: Thank you. And can you please
8 state your full name, spelling your last name?

9 MS. SANITA: Lisa M. Sanita, S-A-N-I-T-A.

10 COURTROOM DEPUTY: And is it Lisa, L-I-S-A?

11 MS. SANITA: L-I-S-A.

12 COURTROOM DEPUTY: Okay.

13 MS. SANITA: M as in Mary.

14 COURTROOM DEPUTY: Sir, please your right hand. Do
15 you swear or affirm that the testimony you're about to give to
16 this Court will be the truth, the whole truth, and nothing but
17 the truth, so help you God or do you so affirm?

18 MR. SANITA: I do.

19 RICHARD SANITA, PLAINTIFF, SWORN

20 COURTROOM DEPUTY: And the same thing, please state
21 your full name, spelling your last name.

22 MR. SANITA: Richard J. Sanita, spelled the exact
23 same way.

24 COURTROOM DEPUTY: Please raise your right hand. Do
25 you swear or affirm that the testimony you're about to give to

1 this Court will be the truth, the whole truth, and nothing but
2 the truth, so help you God, or do you so affirm?

3 MR. CHARLES KONKOL: I do.

4 CHARLES KONKOL, PLAINTIFF, SWORN

5 COURTROOM DEPUTY: Thank you. And the same thing,
6 first and last name?

7 MR. KONKOL: Charles Konkol, K-O-N-K-O-L.

8 COURTROOM DEPUTY: K-O-N-K?

9 MR. KONKOL: O-L.

10 COURTROOM DEPUTY: O-L. Okay. Thank you. You may
11 be seated.

12 THE COURT: All right. Let me turn to Mr. Shaffer.
13 Mr. Shaffer, would you articulate the terms of the agreement
14 that the parties have reached? then we'll turn to Mr.
15 Altschuler to see if he concurs with what you've stated.

16 MR. SHAFFER: First off, on behalf of my client, Your
17 Honor, thank you for your hard work this afternoon and thank
18 you for the Defendants on their hard work and coming to some
19 type of agreement to arbitrate this matter. The terms are as
20 follows: the binding arbitration we've agreed to with the
21 following limits, a high of 325,000, a low of 60,000. We've
22 agreed to submit it to retired Judge Stengel. I'm assuming if
23 there is a conflict with Judge Stengel, then we will then go to
24 another Federal Judge, but hopefully there'll be no conflict
25 with him.

1 It is my hope that we'll be able to finish this in
2 one day. The parties have not been able to come to an
3 agreement whether or not we're going to do this on reports.
4 We'll prob -- each side is going to decide if they're going to
5 do their own reports or bring in live experts. That is for the
6 parties. We're going to schedule this as soon as possible.

7 MR. ALTSCHULER: Your Honor, a couple of issues.
8 First of all, as far as the high-low is concerned, this may go
9 without saying, the arbitrator is not to be made aware of the
10 parameters, number one. Number two, I don't know that it's
11 going to take one day. Of course, my goal is to get it done as
12 quickly as I can, but I'm not going to give any assurances that
13 it can be done in one day.

14 And then, lastly, there was not an agreement with
15 regard to doing this on reports. I plan, or at least want to
16 have the option of bringing in my liability expert. My medical
17 expert has already been videotaped, and I wanted to have the
18 ability to take the Plaintiff's doctor's deposition, as well,
19 as opposed to his report being entered into evidence at the
20 arbitration.

21 MR. SHAFFER: Well, that's my option if I want to
22 proceed with that stuff. It's not -- it's not (inaudible).

23 MR. ALTSCHULER: Yeah, I, I can't agree to that.
24 We're talking (inaudible) in his report. So I want to have the
25 opportunity to question him.

1 MR. SHAFFER: All right. We'll do the (inaudible).

2 MR. ALTSCHULER: All right. And I'm assuming you
3 paid for it.

4 THE COURT: All right. It sounds like the -- if I
5 understood everybody here, let me see if I can summarize it in
6 its totality, a binding high/low arbitration to be conducted in
7 front of retired Federal Judge Lawrence Stengel. Judge Stengel
8 is not to be told the parameters of the high/low.

9 MR. SHAFFER: Of course.

10 THE COURT: I know there's a request that'll be done
11 in one day, but there's no agreement that it is limited to one
12 day.

13 MR. SHAFFER: Correct.

14 THE COURT: The deposition of Plaintiff's doctor,
15 which is currently scheduled for this Friday, will go forward
16 as currently scheduled.

17 MR. SHAFFER: Correct.

18 THE COURT: Was there anything else?

19 MR. ALTSCHULER: Yeah. I wanted to have the option
20 to bring in experts, an expert, a liability expert in my --

21 THE COURT: -- Yeah, I didn't hear any restriction on
22 that.

23 MR. ALTSCHULER: Thank you.

24 MS. SANITA: It's (inaudible).

25 MR. ALTSCHULER: Okay.

1 THE COURT: All right. Anything else?

2 MR. SHAFFER: No, Your Honor.

3 THE COURT: All right. Do we have an agreement then
4 between the lawyers?

5 MR. ALTSCHULER: Yes, Your Honor.

6 THE COURT: All right. Now, let me address to the
7 clients that are here today. Ms. Sanita, did you hear the
8 terms of the agreement to go forward with the binding
9 arbitration?

10 MS. SANITA: Yes.

11 THE COURT: And are you in agreement with those
12 terms?

13 MS. SANITA: Yes, Your Honor.

14 THE COURT: All right.

15 MR. SHAFFER: And also, Your Honor, I think I should
16 put on the record that Mrs. Sanita has power of attorney for
17 her father.

18 THE COURT: All right. And Mr. Sanita, you also
19 heard the terms of this proposed binding arbitration agreement?

20 MR. SANITA: Yes, I did.

21 THE COURT: And you're in agreement with those terms?

22 MR. SANITA: Yes, I am.

23 THE COURT: All right. And Mr. Konkol, you're here
24 on behalf of Invacare Corporation. By the way, let's put on
25 the record what your title is with the company.

1 MR. KONKOL: Claims Manager.

2 THE COURT: All right. And you heard the terms of
3 the binding arbitration agreement stated today?

4 MR. KONKOL: Yes.

5 THE COURT: And you're in -- you're in agreement with
6 those terms?

7 MR. KONKOL: Yes.

8 THE COURT: All right. Very good. Everyone may be
9 seated. All right. Is there anything else we can accomplish
10 before we adjourn Court today?

11 MR. SHAFFER: No, that's fine. Thank you, Your
12 Honor, for your time.

13 THE COURT: All right.

14 MR. ALTSCHULER: No, Your Honor. Thank you very much
15 for all your help.

16 THE COURT: All right. What we're going to do is,
17 we're going to put the case on hold. The trial next week,
18 obviously, is not going to occur. The filings that you were
19 supposed to present to me tomorrow and Friday, obviously, do
20 not need to be filed as a result. We will keep the docket on
21 the case open until the arbitration is concluded, but I will
22 direct that within the -- within 10 days of the arbitration
23 being concluded, or I should say when the -- after the -- 10
24 days after the award is entered, that counsel send a joint
25 report indicating that the case is concluded so we'll know to

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1 terminate the docket. All right. There being nothing else,
2 Mr. Wood, would you adjourn Court, please?

3 COURTROOM DEPUTY: Yes, sir. All rise. The Court is
4 adjourned.

5 THE COURT: Have a good day, everyone.

6 [OFF THE RECORD]

* * * *

C E R T I F I C A T I O N

I, Kelvin Wobine, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.



DATE: June 12, 2023